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Attorneys for
Official Committee of Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:
2ND CHANCE INVESTMENT GROUP, LLC,

Debtor and Debtor-in-
possession.

Case No. 8:22-bk-12142-SC

Chapter 11 Proceeding

**NOTICE OF MOTION AND MOTION
TO APPROVE COMPROMISE OF
LAWSUIT AND CONTROVERSY
BETWEEN THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS AND DISCOVER BANK;
DECLARATION OF SAJAN BHAKTA
IN SUPPORT THEREOF**

[No Hearing Required under Local
Bankruptcy Rule 9013-1(o)]

PLEASE TAKE NOTICE THAT the Official Committee of Unsecured Creditors (“Committee”) formed for the bankruptcy estate of 2nd Chance Investment Group, LLC, Debtor and Debtor in Possession (“Debtor”) hereby files his motion (“Motion”) to approve a litigation settlement and compromise of controversy (“Settlement”) between the Committee and Discover Bank (“Discover”). By the Motion, the Committee seeks an order approving the Settlement, which calls for payment by Discover of \$14,000 in exchange for releases and dismissal of claims filed by the Committee against Discover in the adversary proceeding entitled *Official Committee of*

1 *Unsecured Creditors v. Discover Bank, et al*, Case No. 8:24-ap-01020-SC, and has been
2 memorialized in that certain Release and Settlement Agreement (“Settlement Agreement”). The
3 Committee believes the terms of the Settlement Agreement are fair, reasonable, and consistent with
4 the standard applicable to compromises for which approval is sought under Federal Rule of
5 Bankruptcy Procedure 9019. The Settlement Agreement is attached as **Exhibit “1,”** to the
6 Declaration of Robert P. Goe filed herewith.

7 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion,
8 the attached Memorandum of Points and Authorities, the Bhakta Declaration, and the fact that the
9 Parties have entered into the Settlement Agreement.

10 **IF YOU DO NOT OPPOSE THE MOTION, YOU NEED TAKE NO FURTHER**
11 **ACTION. IF YOU OBJECT TO THE MOTION, PURSUANT TO LOCAL BANKRUPTCY**
12 **RULE 9013-1 (o) (1) (A) (ii), OBJECTIONS AND A WRITTEN REQUEST FOR HEARING**
13 **MUST BE FILED WITH THE COURT WITHIN 17 DAYS OF THE DATE OF SERVICE**
14 **OF THIS NOTICE, IN THE FORM REQUIRED BY LOCAL BANKRUPTCY RULE 9013-**
15 **1(o)(1). YOU MUST FILE YOUR OBJECTION AND REQUEST FOR A HEARING WITH**
16 **THE CLERK OF THE UNITED STATES BANKRUPTCY COURT LOCATED AT 411**
17 **WEST FOURTH STREET, SANTA ANA, CA 92701. YOU MUST SERVE A COPY OF**
18 **YOUR OBJECTION TO THE MOTION AND REQUEST FOR A HEARING ON THE**
19 **COMMITTEE’S PROPOSED COUNSEL AT THE ADDRESS INDICATED IN THE**
20 **UPPER LEFT-HAND CORNER OF THIS NOTICE, AND UPON THE OFFICE OF THE**
21 **UNITED STATES TRUSTEE LOCATED AT 411 WEST FOURTH STREET, SUITE 7160,**
22 **SANTA ANA, CA 92701-4500. UPON RECEIPT OF A WRITTEN OBJECTION AND**
23 **REQUEST FOR A HEARING, THE COMMITTEE’S PROPOSED COUNSEL WILL**
24 **OBTAIN A HEARING DATE AND GIVE APPROPRIATE NOTICE THEREOF. ANY**
25 **FAILURE TO TIMELY FILE AND SERVE OBJECTIONS MAY RESULT IN ANY SUCH**
26 **OBJECTIONS BEING WAIVED.**

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Respectfully submitted,

DATED: February 7, 2025

GOE FORSYTHE & HODGES LLP

By: /s/ Robert P. Goe

Robert P. Goe

Charity J. Manee

Attorneys for the Official Committee of

Unsecured Creditors of 2nd Chance

Investment Group, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Official Committee of Unsecured Creditors for the bankruptcy case of 2nd Chance Investment Group, LLC (“Committee”) respectfully requests entry of an order approving the settlement reached between the Committee and Discover Bank (“Discover”), which has been reduced to writing in that certain Release and Settlement Agreement between the Committee and Discover (“Settlement Agreement”), a true and correct copy of which is attached as **Exhibit “1”** to the Declaration of Sajan Bhakta (“Bhakta Declaration”) in support of this Motion.

The Settlement Agreement resolves the avoidance action brought by the Committee against Discover, solely as between these two entities (“Parties”), entitled *Official Committee of Unsecured Creditors v. Discover Bank, et al*, Case No. 8:24-ap-01020-SC (“Lawsuit”). In exchange for releases of claims and dismissal of the Lawsuit, Discover will pay \$14,000 (“Settlement Payment”). The total demand stated in the Lawsuit equally against Discover and the other defendants, insiders of the Debtor, was \$19,120.68.

Based on the amount of the Settlement Payment and the fact that uncertainty in litigation is being avoided with voluntary payment, resulting in cost savings in a relatively small matter, the Committee believes the Settlement Agreement is in the best interest of the beneficiaries of the liquidation trust created by the *Debtor’s First Amended Liquidating Plan as Modified* [Docket No. 296 in the Bankruptcy Case] (the “Plan”) and that the Settlement Agreement comports with the standard for approval of compromises under Federal Rule of Bankruptcy Procedure 9019. This Motion is being filed because the Plan terms incorporate the terms of the Standing Stipulation (defined below) which conferred standing on the Committee to bring the Lawsuit, among other things, which requires the Committee to file a motion to approve any compromises of controversy reached in any avoidance actions pursued by the Committee, as explained further hereinbelow.

For these and the foregoing reasons, the Motion should be granted.

II. BACKGROUND

Debtor’s bankruptcy case was commenced on December 21, 2022 (“Petition Date”), by the filing of a voluntary Chapter 11 petition by Debtor.

1 On February 7, 2023, the United States Trustee's Office appointed (as amended), the
2 following unsecured creditors to serve on the Committee: (1) Felipe Gutierrez Jr., (2) Jesus Acosta,
3 (3) Straten Lending Group, LLC, c/o Shan Patel, (4) ASB Ventures LLC, c/o Sajan Bhakta, (5)
4 Precision Realty Fund, LLC, c/o Hiten Ram Bhakta, and (6) Zona AZ LLC, c/o Vishal Bhakta.
5 [Docket No. 39.]

6 During the Meeting of Creditors, it was revealed that Debtor through its insiders may have
7 intermingled assets with its agents and an affiliated entity. As such, the Committee and the Debtor
8 agreed to grant standing for the Committee to investigate and pursue certain avoidance actions and
9 related claims on behalf of the Debtor's bankruptcy estate. The Bankruptcy Court's *Order*
10 *Approving Stipulation Between Debtor and the Official Committee of Unsecured Creditors*
11 *Granting the Committee Standing to Pursue Certain Avoidance Actions on Behalf of the Estate*
12 ("Committee Standing Order") was entered on March 22, 2023 in the Bankruptcy Case at Docket
13 Entry No. 77, the terms of which were incorporated into the *Debtor's First Amended Liquidating*
14 *Plan as Modified* [Docket No. 296 in the Bankruptcy Case] (the "Plan"), which was confirmed by
15 the *Order Confirming Debtor's First Amended Chapter 11 Liquidating Plan As Modified* entered
16 on February 12, 2024 [Docket No. 381 in the Bankruptcy Case] ("Confirmation Order"). Based on
17 the Committee Standing Order and the Confirmation Order, the Committee became the
18 representative of the bankruptcy estate whose authority, includes, but is not limited to pursuing,
19 suing on, and settling all actions, arising under Bankruptcy Code sections 502, 510, 544, 545, 547,
20 548, 549, 550 and 553, or any avoidance actions under applicable non-bankruptcy law.

21 This Motion is being filed pursuant to the first paragraph of the *Stipulation Between Debtor*
22 *and the Official Committee of Unsecured Creditors Granting the Committee Standing to Pursue*
23 *Certain Avoidance Actions on Behalf of the Estate* ("Standing Stipulation"), which was approved
24 by the Committee Standing Order, and provides in the first paragraph of the stipulated terms,

25 WHEREFORE, based on the foregoing Recitals, and subject to Bankruptcy Court approval,
26 the Committee, by and through its counsel, shall have standing and authority, without
27 further order of the Bankruptcy Court, to (a) investigate Avoidance Actions, (b) file, serve,
28 prosecute and settle (subject to separate Bankruptcy Court approval) Avoidance Actions,
whether in the Bankruptcy Court or another forum, and (c) grant releases of liability with
respect to Avoidance Actions that are settled pursuant to separate Bankruptcy Court
approval.

1 Standing Stipulation, Docket No. 76 at 2:13-18.

2 The Standing Stipulation, which calls for Court approval of settlements achieved by the
3 Committee with any avoidance action litigation target, was incorporated into the Plan.

4 On February 8, 2024, the Committee filed its Complaint against Discover, Rayshon Foster
5 and Sonja Foster (“Fosters”), commencing the Lawsuit. By the Lawsuit, the Committee is seeking
6 to avoid and recover \$19,120.68 in transfers made to Discover on account of non-debtor credit card
7 debt owed by the Fosters.

8 The Committee and Discover have agreed to resolve the Lawsuit and release claims in
9 exchange for payment by Discover in the amount of \$14,000. As noted above, the Settlement
10 Agreement is attached to the Bhakta Declaration as **Exhibit “1”**. As described below, the
11 Committee believes the Settlement Agreement is an ideal result to the Lawsuit and is vastly better
12 than the alternative of pursuing litigation, the cost of which would outweigh the benefits.

13 **III. ARGUMENT**

14 This Motion is being brought under the Court’s inherent authority and authority to enforce
15 its prior orders, including the Committee Standing Order and Confirmation Order, which
16 contemplated (particularly the former) that the Committee would seek Court approval of settlements
17 achieved in litigation it pursued on behalf of the Debtor’s estate and/or liquidating trust formed by
18 the confirmed Plan. While Federal Rule of Bankruptcy Procedure 9019 is not applicable in the sense
19 that this motion is being filed by the Committee in the post-plan confirmation era of this liquidating
20 chapter 11 case, the legal standard applicable to compromises for which approval is sought and/or
21 required under Rule 9019 is useful and will be employed here to demonstrate the propriety and
22 beneficial nature of the Settlement Agreement.

23 **A. Rule 9019 Standard**

24 Pursuant to Rule 9019(a), a bankruptcy court, on motion of the trustee and after notice and
25 a hearing, may approve a compromise or settlement. See Fed. R. Bankr. P. 9019(a). A “bankruptcy
26 court has great latitude in approving compromise agreements.” *Martin v. Kane (In re A & C*
27 *Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). “The purpose of a compromise agreement is
28 to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating

1 sharply contested . . . claims.” *Id.* In approving a compromise, a bankruptcy court must find that the
2 compromise is fair and equitable and that the negotiations between the parties were conducted in
3 good faith. *Id.*

4 A bankruptcy court need not conduct an exhaustive investigation into the validity of the
5 merits of the claims sought to be compromised. *In re Walsh Const. Inc.*, 69 F.2d 1325, 1328 (9th
6 Cir. 1982). Likewise, a bankruptcy court is not required to decide the question of law and fact raised
7 in the controversies sought to be settled, nor is it required to determine whether the settlement
8 presented is the best one that could possibly have been achieved. Rather, it is sufficient that the
9 settlement not fall “below the lowest point in the zone of reasonableness.” *Newman v. Stein*, 464
10 F.2d 689, 698 (2d Cir. 1972); *In re W. T. Grant & Co.*, 699 F.2d 599, 608 (2d Cir. 1983).

11 The specific inquiry of determining the fairness, reasonableness and adequacy of a proposed
12 settlement agreement must be directed at the following factors: (i) the probability of success in the
13 litigation, (ii) the difficulties, if any, to be encountered in the matter of collection, (iii) the complexity
14 of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and
15 (iv) the interest of creditors, which is paramount. *A & C Properties*, 784 F.2d at 1381. “The law
16 favors compromise and as long as the bankruptcy court amply considered the various factors that
17 determined the reasonableness of the compromise, the court’s decision must be affirmed.” *Fridman*
18 *v. Anderson (In re Fridman)*, 2016 Bankr. LEXIS 2608, *23-24 (BAP 9th Cir. July 15, 2016).

19 Here, the Settlement Agreement is fair, reasonable, and in the best interests of the
20 beneficiaries of Debtor’s liquidating Plan and creditors based on the *A & C Properties* factors.

21 **B. Probability of Success in the Litigation**

22 The Committee believes it would have a high probability of success if the Lawsuit were tried
23 on the merits because the payments Discover received from the Debtor were on account of debts
24 owed by Debtor’s insiders, which Debtor did not owe. Debtor’s insiders, the Fosters, engaged in a
25 widespread pattern and practice of defrauding the Debtor’s legitimate creditors by siphoning
26 millions of dollars from the Debtor’s coffers to themselves directly and to third parties for their
27 exclusive benefit. The Committee has gathered overwhelming evidence in this regard and the
28 Fosters have very little if any records relating to Debtor’s business and apparently no records that

1 would support any defense or demonstrate the Debtor received value for funds received by parties
2 whose non-Debtor debts were paid, such as Discover. The Committee also feels strongly that it can
3 establish the lack of any value given to the Debtor and insolvency at the time the payments were
4 made, given the Debtor's practice of incurring massive secured and unsecured debt in the course of
5 its business, the proceeds of which were vastly used to enrich the Fosters at the expense of Debtor's
6 legitimate creditors. Debtor's assets usually consisted of encumbered real estate and a small fleet of
7 encumbered cars.

8 **C. Potential Collection Difficulties**

9 The Committee believes it would be able to collect from Discover without any difficulty
10 because it is an international financial institution.

11 **D. Complexity of the Litigation Involved**

12 The case does not involve very complicated issues but the Debtor's lack of business records
13 have complicated certain facets of the case, including the need to construct a balance sheet to
14 demonstrate insolvency. The litigation would not be extremely complex but would be costly to
15 pursue to trial for very little additional payment possible above the Settlement Payment.

16 **E. Paramount Interest of Creditors**

17 The Settlement Agreement vastly benefits creditors/beneficiaries of the Debtor's liquidating
18 trust over proceeding with the litigation because it recovers \$14,000 on account of an approximately
19 \$19,000 claim (the smallest litigation claims being pursued by the Committee in terms of amount at
20 issue) and the cost of proceeding through a trial would more than negate the additional possible
21 \$5,120.68 that could be recovered from Discover if the Committee were to prevail completely on
22 its claims, greatly diminishing the benefit of the Lawsuit.

23 Therefore, the paramount interest of creditors/liquidating trust beneficiaries favors approval
24 of the Settlement Agreement.

25 \\\

1 **IV. CONCLUSION**

2 Based on the foregoing, the Committee requests that the Court enter an order approving the
3 Settlement Agreement.

4 Respectfully submitted,

5 DATED: February 7, 2025

GOE FORSYTHE & HODGES LLP

6 By: /s/ Robert P. Goe

7 Robert P. Goe

8 Charity J. Manee

9 Attorneys for the Official Committee of

10 Unsecured Creditors of 2nd Chance

11 Investment Group, LLC

DECLARATION OF SAJAN BHAKTA

I, Sajan Bhakta, declare and state:

The matters stated herein are true and correct and within my own personal knowledge and belief. If called as a witness, I could and would competently testify thereto.

1. I am the managing member of ASB Ventures, LLC, a co-chair of the Official Committee of Unsecured Creditors (“Committee”) appointed in the above-captioned Chapter 11 case entitled *In re 2nd Chance Investments, LLC*. I make this declaration in support of the *Motion To Approve Compromise Of Lawsuit And Controversy Between The Official Committee Of Unsecured Creditors And Discover Bank* (“Motion”) to which this declaration is attached.

2. 2nd Chance Investment’s LLC’s (“Debtor”) bankruptcy case was commenced on December 21, 2022 (“Petition Date”), by the filing of a voluntary Chapter 11 petition.

3. On February 7, 2023, the United States Trustee’s Office appointed (as amended), the following unsecured creditors to serve on the Committee: (1) Felipe Gutierrez Jr., (2) Jesus Acosta, (3) Straten Lending Group, LLC, c/o Shan Patel, (4) ASB Ventures LLC, c/o Sajan Bhakta, (5) Precision Realty Fund, LLC, c/o Hiten Ram Bhakta, and (6) Zona AZ LLC, c/o Vishal Bhakta. [Docket No. 39.]

4. During the Meeting of Creditors, it was revealed that Debtor through its insiders may have intermingled assets with its agents and an affiliated entity. As such, the Committee and the Debtor agreed to grant standing for the Committee to investigate and pursue certain avoidance actions and related claims on behalf of the Debtor’s bankruptcy estate.

5. The Bankruptcy Court’s *Order Approving Stipulation Between Debtor and the Official Committee of Unsecured Creditors Granting the Committee Standing to Pursue Certain Avoidance Actions on Behalf of the Estate* (“Committee Standing Order”) was entered on March 22, 2023 in the Bankruptcy Case at Docket Entry No. 77, the terms of which were incorporated into the *Debtor’s First Amended Liquidating Plan as Modified* [Docket No. 296 in the Bankruptcy Case] (the “Plan”), which was confirmed by the *Order Confirming Debtor’s First Amended Chapter 11 Liquidating Plan As Modified* entered on February 12, 2024 [Docket No. 381 in the Bankruptcy Case] (“Confirmation Order”).

1 6. Based on the Committee Standing Order and the Confirmation Order, the Committee
2 became the representative of the bankruptcy estate whose authority, includes, but is not limited to
3 pursuing, suing on, and settling all actions, arising under Bankruptcy Code sections 502, 510, 544,
4 545, 547, 548, 549, 550 and 553, or any avoidance actions under applicable non-bankruptcy law.

5 7. This Motion is being filed pursuant to the first paragraph of the *Stipulation Between*
6 *Debtor and the Official Committee of Unsecured Creditors Granting the Committee Standing to*
7 *Pursue Certain Avoidance Actions on Behalf of the Estate* (“Standing Stipulation”), which was
8 approved by the Committee Standing Order, and calls for Court approval of settlements achieved
9 by the Committee with respect to claims it pursues. Subsequently, the Standing Stipulation was
10 incorporated into the Plan.

11 8. On February 8, 2024, the Committee filed its Complaint against Discover, Rayshon
12 Foster and Sonja Foster (“Fosters”), commencing the Lawsuit. By the Lawsuit, the Committee is
13 seeking to avoid and recover \$19,120.68 in transfers made to Discover on account of non-debtor
14 credit card debt owed by the Fosters.

15 9. The Motion seeks Court approval of that certain Release and Settlement Agreement
16 (“Settlement Agreement”), of the adversary proceeding filed by the Committee against Discover
17 Bank (“Discover”) entitled *Official Committee of Unsecured Creditors v. Discover Bank, et al*, Case
18 No. 8:24-ap-01020-SC (“Lawsuit”). A true and correct copy of the Settlement Agreement is attached
19 hereto as **Exhibit “1”** and is incorporated herein.

20 10. Pursuant to the Settlement, in exchange for releases of claims and dismissal of the
21 Lawsuit, Discover will pay \$14,000 (“Settlement Payment”). The total demand stated in the Lawsuit
22 equally against Discover and the other defendants, insiders of the Debtor, was \$19,120.68.

23 11. Based on the amount of the Settlement Payment and the fact that uncertainty in
24 litigation is being avoided with voluntary payment, resulting in cost savings in a relatively small
25 matter, the Committee believes the Settlement Agreement is in the best interest of the beneficiaries
26 of the liquidation trust created by the *Debtor’s First Amended Liquidating Plan as Modified* [Docket
27 No. 296 in the Bankruptcy Case] (the “Plan”) and that the Settlement Agreement comports with the
28 standard for approval of compromises under Federal Rule of Bankruptcy Procedure 9019.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 EXECUTED on February ____, 2023, at Irvine, California

4
5 Dated: February 6, 2025


/s/ 
Sajan Bhakta

EXHIBIT 1

EXHIBIT 1

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is made between Official Committee of Unsecured Creditors (“Plaintiff”), appointed by the United States Trustee pursuant to 11 U.S.C. § 1102(a) as the committee of creditors for 2nd Chance Investment Group LLC (“Debtor” or the “Estate”) and Discover Bank (“Discover”). Discover and Plaintiff may hereafter be referred to collectively as the “Parties,” and each individually, a “Party,” with reference to the following facts.

WHEREAS, on or about December 21, 2022, Debtor filed a Chapter 11 Petition in the United States Bankruptcy Court for the Central District of California, Case No. 8:22-bk-12142-SC (the “Bankruptcy Proceeding”) and Plaintiff has been appointed the Creditor’s Committee for the benefit of the Estate and its creditors in the Bankruptcy Proceeding;

WHEREAS, Plaintiff has commenced an Adversary Proceeding against Discover in the United States Bankruptcy Court for the Central District of California, under Official Committee of Unsecured Creditors v. Discover Bank, et al, Case No. 8:24-ap-01020-SC (the “Lawsuit”), in connection with Discover® Card account issued to Rayshon Foster with account number ending in 8279 (“the Account”);

WHEREAS, Plaintiff has alleged, among other things, that charges made to the Account were for personal expenses not related to the business operations of Debtor, that funds of Debtor were misdirected to pay the Account, and that such payments constitute avoidable fraudulent transfers;

WHEREAS, Plaintiff and Discover desire to settle, resolve and dispose of any and all of the claims asserted in the Lawsuit in order to avoid expensive, time-consuming and uncertain litigation;

WHEREAS, nothing contained herein is to be construed as an admission of liability on the part of Discover. To the contrary, Discover specifically denies any liability for any of the claims alleged in the Lawsuit; and

WHEREAS, the terms of this Agreement represent the compromise of disputed claims in the Lawsuit and do not in any way signify that there was wrongdoing on any party’s part.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the covenants contained herein, Plaintiff and Discover agree as follows:

1. This settlement agreement shall not become binding on the Parties until it is approved by the Bankruptcy Court where the Lawsuit is pending. In the event that it is not approved, Settlement Funds (defined below) will be returned to Discover and the Lawsuit will proceed on as if there had been no settlement agreement.

2. Within thirty (30) days of approval of the settlement by the Bankruptcy Court, Plaintiff shall dismiss the Lawsuit in its entirety and with prejudice. The Parties shall bear their own attorneys' fees and costs, if any, in connection with the Lawsuit, this Agreement and the matters referred to herein, the filing of a dismissal, seeking approval of the settlement with the Bankruptcy Court, if necessary, and all related matters.

3. Discover shall pay Plaintiff \$14,000.00 (the "Settlement Funds") within 30 business days after the receipt of both a fully executed Agreement and a completed W-9 form. Discover shall issue a check payable to: Goe Forsythe & Hodges LLP Trust Account and shall deliver the check to: Goe Forsythe & Hodges LLP, Attn: Robert P. Goe, 17701 Cowan, Suite 210, Building D, Irvine, CA 92614. Plaintiff's counsel shall hold the Settlement Funds in trust until the Bankruptcy Court approves this settlement.

4. Plaintiff acknowledges and agrees that nothing contained in this Agreement shall alter or affect the cardmember's liability for, or the terms and conditions governing, the Account.

5. In consideration of the various promises and obligations of the Parties set forth in this Agreement, which shall be deemed effective upon the later of the Effective Date and Plaintiff having received the full Settlement Funds (including without limitation having cleared the banking process), and except for the obligations set forth in, created by, arising out of or reserved by this Agreement, Plaintiff hereby releases and forever discharges Discover, and its parent(s), affiliates, subsidiaries, predecessors, successors, and the officers, directors, agents, assigns, servants, employees and attorneys of these entities, from any and all claims, causes of action, damages, losses, debts, obligations, agreements, liabilities, judgments, debts, attorney's fees, costs and expenses, whether asserted or unasserted or that could have been asserted, known or unknown, suspected or unsuspected, fixed or contingent, and whether arising under state law, federal law, common law or otherwise, which arise directly or indirectly out of any facts, events, or transactions that occurred from the beginning of time through the date that Plaintiff executes this Agreement, and in any way related to, arising from, out of or based upon the Account (or any other accounts Debtor may have with Discover) or the matters or substance of the matters alleged by Plaintiff in the Lawsuit or which could have been asserted in the Lawsuit.

6. The Parties understand that they may hereafter discover facts different from or in addition to what the Parties now believe to be true, which if known, could have materially affected this Agreement, but they nevertheless waive any and all such claims, rights, demands, actions, obligations, liabilities, and causes of action based on different or additional facts. The Parties knowingly and voluntarily waive any and all such claims, rights, demands, actions, obligations, liabilities, and causes of action that they may now have, or in the future have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the

debtor or released party.”

7. Plaintiff represents and warrants that as of the date of this Agreement (i) Plaintiff does not have and is not aware of any claims, demands, actions, causes of action, suits, damages, liabilities, judgments, debts, attorneys’ fees, costs or expenses, whether based in contract law, tort law, equity, statute, regulation, or otherwise, whether state, federal, or local, known or unknown or asserted or unasserted (“Claims”), by the Estate against Discover other than the Claims released by this Agreement and (ii) Plaintiff has no present intention to make or assert any Claims against Discover on behalf of the Estate.

8.

a) Except as otherwise set forth in this Agreement, each of the Parties hereby represents and warrants that they have not previously assigned or transferred in any manner or purported to have assigned or transferred in any manner, any of the claims described or set forth in Paragraphs 5 through 7 above, and

b) Except as otherwise set forth in this Agreement, each of the Parties hereby represents and warrants that the person executing this Agreement on its behalf is duly authorized to do so, and that he/she is authorized to bind the Party to the terms set forth herein. Notwithstanding the foregoing, the Plaintiff’s authority to enter into this Agreement is subject to Bankruptcy Court approval as set forth in paragraph 1 above.

9. Should any clause, sentence, paragraph or other part of this Agreement be finally adjudged by any court of competent jurisdiction to be unconstitutional, invalid or in any way unenforceable, such adjudication shall not affect, impair, invalidate or nullify the Agreement, but shall affect only the clause, sentence, paragraph or other parts so adjudged.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without regard to California’s choice of law provisions.

11.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT THERETO.

12. Should any of the provisions or terms of this Agreement require judicial interpretation, it is agreed that the Court, or other trier of fact interpreting or construing this Agreement, shall not apply a presumption that such provision(s) or term(s) shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who prepared it. It is agreed that all Parties have participated in the preparation and review of this Agreement.

13. This Agreement constitutes the entire agreement and understanding between the parties hereto and shall not be modified or altered except by written instrument duly executed by the parties hereto.

14. Plaintiff agrees to keep confidential and shall not reveal and/or communicate in any way to any person, the terms of this Agreement. However, Plaintiff shall have the right to disclose said terms to the Bankruptcy Court (as needed) for the purposes of seeking approval of the settlement, any accountant or tax advisor and to state and federal tax authorities. Plaintiff warrants and represents to Discover that it has not revealed to anyone the terms of this proposed settlement at any time before this Agreement was executed by all parties. Plaintiff agrees that, if asked, it will only reveal that the Lawsuit has been settled, and it will not reveal any other terms of the Agreement, without the prior written consent of Discover. If Plaintiff is ordered by any Court to reveal information concerning this settlement which is precluded from disclosure under this Agreement, Plaintiff shall give written notice of such disclosure to Discover and its attorneys in this action at least 48 hours prior to any such disclosure unless otherwise ordered by the Court.

15. As provided in this Agreement, written notice shall be provided to:

If to Discover: Discover Financial Services
Attn: Law Department / Litigation
2500 Lake Cook Road
Riverwoods, IL 60015

If to Plaintiff: Robert P. Goe
GOE FORSYTHE & HODGES LLP
17701 Cowan, Bldg. D, Suite 210
Irvine, CA 92614
rgoe@goeforlaw.com

This Agreement may be signed in counterparts and facsimile signatures will be deemed originals.

Dated: _____, 2024

Official Committee of Unsecured Creditors


for

2nd Chance Investment Group LLC

Signature: _____

Name: _____

Title: _____


1/2/2025

Dated: JANUARY 13, 2025

Discover Bank

Signature: _____

Name: _____

Title: _____



HEATHER THOMPSON

VP collections & Recovery

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 17701 Cowan, Bldg. D, Suite 210, Irvine, CA 92614

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION TO APPROVE COMPROMISE OF LAWSUIT AND CONTROVERSY BETWEEN THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DISCOVER BANK; DECLARATION OF SAJAN BHAKTA IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) February 7, 2025, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) February 7, 2025, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows: Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:

(*state the method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) February 7, 2025, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Honorable Scott C. Clarkson, 411 W. Fourth Street, Suite 5130; Santa Ana, CA 92701-459

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 7, 2025
Date

Susan C. Stein
Printed Name

/s/Susan C. Stein
Signature

Mailing Information for Case 8:22-bk-12142-SC

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

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**In re 2nd Chance Investment Group,
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USBC Case No. 8:22-bk-12142-SC**

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